

Remarks

Claims 1-20 are pending in this application. No claims have been amended, added, or canceled.

Applicant wishes to thank the Examiner for extending the courtesy of a telephone interview. Reconsideration of this application is respectfully requested in light of the following remarks.

Specification

The first sentence of the specification has been amended to include the current status of the parent applications.

Information Disclosure Statement

Applicant wishes to remind the Examiner of information provided in the Information Disclosure Statement filed in the parent case wherein sales of the disclosed tray were made more than one year prior to filing of the parent application, although after the filing date of the grandparent application. The claims of the present application are fully supported by the disclosure of the grandparent application.

Rejection of Claims 1-3, 5-7, and 9-20 Under 35 U.S.C. § 102(b)

Claims 1-3, 5-7, and 9-20 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,323,925 issued to Apps ("Apps"). Applicant respectfully traverses this rejection for the reasons stated below.

With reference to independent claims 1, 6, and 13, Applicant recites "a low depth wall structure comprising a plurality of columns arranged along the periphery of the floor structure" and "a band having side and end portions spaced above the floor structure and connected to the floor structure by said columns." Claim 1 recites that "said band is contoured downwardly to form a band corner portion that directly connects to the floor structure at each

corner of said tray,” whereas claim 6 recites that “said band is contoured downwardly along the side portions to form a band central portion that directly connects to the floor structure at the side portions of said tray.” Likewise, claim 13 recites that “said band is contoured downwardly along the side portions to form a band side detail that directly connects to the floor structure at the side portions of said tray.”

In contrast to Applicant’s claimed invention, Apps neither discloses or suggests a band that is contoured downwardly, either at the corners or the side of the tray. Instead, Apps discloses only a tray comprising “an enclosing rail 16 maintained in vertically spaced relation with respect to the floor by means of a plurality of columns 18 disposed in longitudinally spaced relation about the periphery of the apparatus” (col. 5, lines 25-28). Apps further discloses that “[s]upport posts 20 located at each of the four corners of the tray serve to maintain the rail 16 in spaced relation to the floor 12 and provide additional corner support for the tray 10” (col. 5, lines 29-32). Apps neither discloses or suggests that rail 16 has portions that directly connect to the floor structure at the corners or side of the tray as in Applicant’s claimed invention.

The Examiner asserts that Apps’ tray includes a plurality of columns 18 and a band which includes rail 16 and support posts 20 (Office Action, p. 2, ¶2). The Examiner further asserts that Applicant’s band corner portion is formed by Apps’ posts 20, and that Apps’ individual support columns 18 on the side of the tray can be considered to be part of the band that is contoured downwardly along the side of the tray to form Applicant’s band side detail that connects to the floor structure at the side of the tray. Applicant respectfully disagrees. Clearly, Apps’ rail 16 corresponds to Applicant’s band side and end portions which are spaced above the floor structure, and both Apps’ columns 18 and support posts 20 are support structures distinct from the rail 16 as disclosed by Apps. Apps’ columns 18 and support posts 20 serve to maintain the rail 16 in spaced relation from the floor, while forming no portion of the rail 16. Applicant set forth this argument in the aforementioned telephone interview, and the Examiner responded that this argument may have merit.

It should be noted that independent claims 1 and 6 were allowed by the Examiner prior to the filing of an Amendment with the RCE filed on August 7, 2001. Applicant asserts that this Amendment merely removed functional language from the preamble of each claim relating to the interaction of the tray with containers loaded therein in order to avoid any argument regarding new matter with respect to the grandparent application, although this function is inherent in the recited structural elements. Applicant believes that these amendments had no bearing on the patentability of the claims over the cited art.

Rejection of Claims 4 and 8 Under 35 U.S.C. § 103(a)

Claims 4 and 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Apps in view of U.S. Patent No. 4,079,077 issued to David ("David"). Claims 4 and 8 depend from and contain all the limitations of independent claims 1 and 6, respectively, which, for the reasons stated above, are believed to be patentably distinguishable over Apps, either alone or in combination with David. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 4 and 8 under 35 U.S.C. § 103(a).

Conclusion

In summary, Applicant believes that the claims meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

A check in the amount of **\$920.00** is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978.

Respectfully submitted,

WILLIAM P. APPS

By Stephanie M. Mansfield

Stephanie M. Mansfield

Reg. No. 43,773

Attorney/Agent for Applicant

Date: April 3, 2002

BROOKS & KUSHMAN P.C.

1000 Town Center, 22nd Floor
Southfield, MI 48075

Phone: 248-358-4400

Fax: 248-358-3351

Attachment



VERSION WITH MARKINGS TO SHOW CHANGES MADE

The first sentence of the specification has been amended as follows:

This application is a continuation of [copending application(s) serial number] U.S. application Serial No. 09/233,082 filed [on] January 19, 1999, now U.S. Patent No. 6,186,328,[. This application] which is a continuation-in-part of U.S. application Serial No. 29/068,737[,] filed March 31, 1997, now U.S. Patent No. D404,204, which is incorporated herein by reference.

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